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Ontario Labour Relations Board HIGHLIGHTS

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Scope Notes

The following are scope notes of some of the decisions issued by the Ontario Labour Relations Board in February of this year. These decisions will appear in the January/February issue of the OLRB Reports. The full text of recent OLRB decisions is now available on-line through the Canadian Legal Information Institute at www.canlii.org.

Construction Industry – Construction Industry Grievance – Damages – Practice and Procedure – Reconsideration – The Board was asked to reconsider a default judgment and applied the four factors set out in *Weinmann Electric Ltd.* – The explanation for the default weighed against granting the request since the responding party's failure to respond was due to its own lack of diligence – The other three factors weighed in favour of the responding party: its reconsideration request was filed in a timely fashion; members of another trade union were performing the work in question thereby providing *prima facie* evidence that there existed a good defence on the merits; and the applicant could not claim prejudice given that it did not come to the Board with clean hands in that it failed to notify the other union of the application – Accordingly the Board granted the application and set aside the default judgment – Grievance continues

BLACK & MCDONALD LIMITED; RE IBEW, LOCAL 120; File No. 3218-05-G; Dated February 15, 2006; Panel: Jack J. Slaughter (4 pages)

Intimidation and Coercion – Unfair Labour Practice – Strike – Two applications were filed pursuant to section 96 of the Act arising from efforts by the CAEA to pressure Blue Man Toronto (BMT) into signing collective agreements with the unions – As part of its campaign, the CAEA issued a directive that its members refrain from performing or auditioning for BMT – Two members of the CAEA on honourable withdrawal status accepted employment with BMT and were subsequently expelled from membership – BMT and these two employees alleged in their applications that CAEA and the other named respondents pressured the employees to quit their employment with BMT, constituting unlawful intimidation and coercion – The employees claimed further that the responding parties called, authorized and/or attempted to cause an unlawful strike by pressuring the employees to quit their employment with BMT, and also, that CAEA violated section 85 by expelling them for refusing to engage in an unlawful strike – The Board dismissed the claim under section 76 on the grounds that the Act does not provide for nor protect a right of an employee to work for an employer contrary to the rules and/or directives of their union while retaining membership in the union at the same time – The Board also declined to grant relief under ss. 81 or 83 as the necessary elements of a "strike" as defined under section 1(1) of the Act were not made out – Finally, with respect to the alleged breach of section 85, the Board held that the directive by the CAEA and the subsequent expulsion from membership of the two employees did not disclose any violation of the Act, as the internal administration of a union constitution does not fall under ss. 81, 83 and 85 of the Act – Applications dismissed

BLUE MAN TORONTO, LLC; RE CANADIAN ACTORS' EQUITY ASSOCIATION; KEN BURNS AND SUSAN WALLACE; File Nos. 0706-05-U; 1015-05-U; Dated February 27, 2006; Panel: Norm Jesin (8 pages)

Certification – Construction Industry – Practice and Procedure – Reconsideration – The Board was asked to reconsider its certification of the applicant by employees who did not receive notice of the certification

application from either the employer or the union – Even on the employees' best case the Board would still have certified the applicant – Therefore, the failure to provide the notice to employees would not have affected the Board's decision – Reconsideration request dismissed

CARLETON IRON WORKS CO. LIMITED; RE INTERNATIONAL ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS, LOCAL 765; File No. 2657-05-R; Dated February 14, 2006; Panel: Corinne F. Murray; John Tomlinson; Alan Haward (5 pages)

Bargaining Unit – Certification – Construction Industry – Status – On the application date the challenged individual, a salaried employee who worked as an estimator and sometimes on the tools, spent part of the day doing wiring work (bargaining unit work) and the remainder of the day determining whether an electric control system installed in part of the building could be extended – The Board first found that the work of determining whether the system could be extended was similar to preparing estimates and was not work in the construction industry – The Board next found that the evidence did not establish that the individual was engaged in bargaining unit work for the majority of the application day – Accordingly, the Board examined other relevant factors (reason for hire was as an estimator; the employee never spent the entire day on the tools; he no longer held a valid Certificate of Qualification; as a salaried employee, he was generally not required to record his hours) and concluded that he was not an employee in the bargaining unit on the application date – Certificate issued

EVERBRITE INDUSTRIES LTD.; IBEW, LOCAL 353; File No. 2448-05-R; Dated February 14, 2006; Panel: Harry Freedman (9 pages)

Alteration of Jurisdiction – Construction Industry – Damages – Interim Relief – Practice and Procedure – Trade Union – Unfair Labour Practice – The Local complained that the International, without just cause and contrary to sections 147 and 149, altered the jurisdiction of the Local and placed it under supervision – The Local also complained that the International represented it in a manner that was arbitrary, discriminatory, or in bad faith – The Board determined that the matter required an expeditious resolution and that this could only be achieved through a consultation – In 2002, as the International restructured into Regional Councils, the Local voluntarily affiliated with GORC (which did not permit Locals to employ persons directly) and remained bound by the International's constitution – In 2005 a dispute arose between the Local and International when three Local officers either resigned or were dismissed from employment with GORC – The Local resolved to withdraw from GORC and remain autonomous; the International responded with an audit, a hearing and the placement of the Local under supervision – The Board first found that there was no alteration of jurisdiction by the International: the International in attempting to keep the Local in the GORC, was doing nothing other than giving effect to the jurisdiction voluntarily assumed by the Local – The Board next considered the four factors set out in s. 147(3) for determining whether the International had cause and found in favour of the International having had cause – Further the Board found the International had just cause to assume supervision of the Local – The Local had no legitimate justification for its secession from the International at the outset and the interests of the Local, as distinct from the interests of the individuals, were not impaired or put in jeopardy by the supervision or the process leading to the supervision – Applications dismissed, subject to the issue of whether damages were payable

GREATER ONTARIO REGIONAL COUNCIL OF CARPENTERS, DRYWALL & ALLIED WORKERS; RE CJA, LOCAL UNION 93; RE CJA; File Nos. 2069-05-U; 3055-05-M; Dated February 28, 2006; Panel: Kevin Whitaker (11 pages)

Bargaining Unit – Certification – Construction Industry – Status – In this application for certification, the Board considered the status of an employee on the date of application and whether, should there be a finding that he was a dependent contractor, he could be included in a bargaining unit of "traditional" employees in light of the provisions of subsections 9(5) and 152(2) of the Act – In concluding that the employee in question was a dependent contractor and should be included in the bargaining unit, the Board held that there is a spectrum of work relationships where more or fewer of the various criteria pointing to employee or independent contractor status may be found – The Board found, however, that there was no need to distinguish between "traditional" employees and dependent contractors in a subsection 158(2) certification application, as the subsection mandates that both

types of employees shall be included in one unit of employees, and that such unit shall be deemed appropriate for collective bargaining – Moreover, subsection 9(5) does not apply to subsection 158(2) due to the operation of section 126.1 of the Act – Accordingly, dependent contractors must be included in a single bargaining unit with other employees in a construction industry certification brought under subsection 158(2) of the Act – Application granted

GREENVILLA DEVELOPMENT GROUP INC.; RE UNIVERSAL WORKERS UNION, LIUNA, LOCAL 183; File No. 2679-04-R; Dated February 9, 2006; Panel: Jack J. Slaughter (13 Pages)

Construction Industry – Construction Industry Grievance – Related Employer/Sale of Business – In this application under sections 1(4) and 69 and referral of a grievance, the material facts were not in dispute – A father owned and operated the alleged predecessor company, PJH&P, which was bound to both an ICI collective agreement and a residential agreement with the applicant – An agreement of purchase and sale entered into with his son provided for the transfer of a list of assets including trucks, plumbing, pipefitting, and sheet metal material, furnaces and machinery – The son incorporated his business which became JJP&H – PJH&P was no longer operational, and the father had no involvement in his son's company – The Board held that there was no common control or direction between the entities as required under section 1(4) of the Act – With respect to the sale of business provisions, the Board determined that at the time of transfer, what enabled JJP&H to enter the market and operate effectively was the business of PJH&P – There was not only the use of equipment and the use of employees, but the transfer of every element of the business other than the owner – Accordingly, the Board held that a functional coherent business unit was transferred to JJP&H in its entirety – In finding a transfer of business occurred, the Board held that the applicant union's established rights should be preserved – Application granted.

JANZEN PLUMBING & HEATING LTD.; PETER JANZEN HEATING & PLUMBING INC; JAMIE JANZEN PLUMBING & HEATING; RE ONTARIO PIPE TRADES COUNCIL AND UNITED ASSOCIATION OF JOURNEYMEN AND APPRENTICES OF THE PLUMBING AND PIPEFITTING INDUSTRY OF THE UNITED STATES AND CANADA, LOCAL 666; File Nos. 2998-04-R; 2999-04-G; Dated February 7, 2006; Panel: Marilyn Silverman (13 Pages)

Duty of Fair Representation – Practice and Procedure – After dismissing two s. 74 complaints, the Board notes that the applicant has filed a number of applications at the Board and other tribunals, all of which relate to his disagreement with an arbitral decision dealing with the employer's duty to accommodate – The Board made a direction that the applicant may not bring another complaint against the union without leave of the Board – Applications dismissed

NEDELKOPOULOS, GUS ; RE CAW-CANADA, LOCAL 222; File Nos. 1838-05-U; 2644-05-U; Dated February 9, 2006; Panel: Christopher J. Albertyn (6 pages)

Discharge – Interim Relief – Remedies – Unfair Labour Practice – OLGC discharged a part-time Security Officer, who was a supporter of the union's organizing campaign, as a result of a pattern of unpredictable, volatile and disruptive behaviour – The parties agreed that the events occurred during an organizing campaign and there was a serious issue to be tried – On balance of harm the Board found that the interim reinstatement of the security officer would expose OLGC to unreasonable risk since the security officer may not be able to perform his duties safely and appropriately and he could be disruptive in the workplace – Furthermore since the union's organizing drive commenced 18 months prior to the security officer's discharge, the application was filed over two weeks after the discharge, and there were no substantial allegations that he was a key inside organizer, the Board found there was not significant harm to PSAC – Accordingly, the Board did not find the balance of harm favoured granting the interim application – Application for interim relief dismissed

ONTARIO LOTTERY AND GAMING CORPORATION; RE PUBLIC SERVICE ALLIANCE OF CANADA; File Nos. 3395-05-M; 3260-05-U; Dated February 21, 2006; Panel: Peter F. Chauvin (5 pages)

Court Proceedings

Duty of Fair Representation – Judicial Review – The applicant sought judicial review of a decision of the Board and its subsequent

reconsideration – The issue before the Court was whether the Board erred in denying the Applicant's claim that UFCW, Local 1000A breached its duty of fair representation pursuant to s. 74 of the Act – The Applicant's complaint arose from mid-term amendments to the collective agreement negotiated by Loblaws Local 1000A that were unanimously ratified by a group of primarily elected division officers – The Union then agreed to the amendments which were opposed by the Applicant on a number of grounds, including that the Union did not properly consult its membership or hold a ratification vote of the mid-term amendments pursuant to s. 44 of the Act – The Court held that the Board was not patently unreasonable in reaching its conclusion in both its decision and reconsideration – The Court stated that the Board properly pointed out that the Union members, including the Applicant, could express their views when the Collective Agreement comes up for renewal – The Court concluded that the Union acted reasonably and fairly in negotiating the mid-term amendments to the Collective Agreement, given the competition faced by Loblaws and the business climate of the day – Application dismissed

BENJAMIN BLASDELL; RE ONTARIO LABOUR RELATIONS BOARD; UNITED FOOD AND COMMERCIAL UNION A.F.L-C.I.O-C.L.C., LOCAL 1000A; LOBLAW'S SUPERMARKETS LIMITED; File Nos. 1341-03-U; 1431-03-M (Court File No. 74010/04); Dated February 2, 2006; Panel: Greer, Macdonald E. and Lax JJ, (8 Pages)

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The decisions listed in this bulletin will be included in the publication Ontario Labour Relations Board Reports. Copies of advance drafts of the OLRB Reports are available for reference at the Ontario Workplace Tribunals Library, 7th Floor, 505 University Avenue, Toronto.

Pending Court Proceedings

Case name & Court File No.	Board File No.	Status
Kostantinos Iaonnidis v. Amalgamated Transit Union, Local 1572, Corp. of City of Mississauga, Transportation and Works Dept., Transit Division Divisional Court No. DC 0500947400	2287-04-U	Pending
United Brotherhood of Carpenters v. United Brotherhood of Carpenters, Local 93 Divisional Court No. 01/06	2069-05-U; 3055-05-M	Pending
Gus Nedelkopoulos v. OLRB Divisional Court No. 77287/05 NEWMARKET	3704-04-U	Pending
Leonard Gott v. Director of Employment Standards, et al Divisional Court No. SC-05-24523-00 (Civil Suit)	0444-02-ES; 1537-03-ES	Dismissed – Feb. 28, 2006
Century Bldg. Restoration Inc. v. Universal Workers Union LIUNA Local 183, et al Divisional Court. No. 76931/05 NEWMARKET	1880-04-G	Pending
1333833 Ontario Inc. v. OLRB, Employment Standards Officer, Norstead Building Products Inc. Divisional Court No. DV-05-236	3559-04-ES	Pending
Wellington De Oliveira v. L.U.I.N.A 183 Divisional Court No. 51/05	0430-04-R	Pending
Benjamin Blasdell v. UFCW Local A.F.L.-C.I.O.-C.L.C. Local 1000A; Loblaws Supermarkets Ltd. Divisional Court No. 74010/04 NEWMARKET	1431-03-M; 1341-03-U	Dismissed – Feb. 2, 2006
Grantley Howell v. OLRB Divisional Court No. 04/178 HAMILTON	0933-01-U; 1273-01-U; 3552-00-U	Heard - Jan. 27, 2006 - Reserved
Association of Professional Ambulance Employees v. City of Toronto, Toronto Emergency Medical Services et al Divisional Court No. 44/04	2456-01-R	Pending
Mississaugas of Scugog Island First Nation v. Great Blue Heron et al Divisional Court No. 10/04	1271-03-U; 1336-03-M; 1414-03-M	Heard – Feb. 23,24,25,28/05 - Reserved